92-1706

Supreme Court, U.S.
FILED
MAR 30 1993
OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

THEOPOLIS L. ARMSTRONG - PETITIONER

VS.

HIGH DESERT HOSPITAL, ROGER HUGHES, COUNTY OF LOS ANGELES, COUNTY OF LOS ANGELES DEPARTMENT OF HEALTH SERVICES, AND DOES 1 THROUGH 100, INCLUSIVE. - RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

In Pro Se Litigant
Theopolis L. Armstrong
12714 Daventry St.
Pacoima, CA 91331
818 896 4745

QUESTION PRESENTED

1 Should the court grant dismissal of a claim under an invalid motion? When motion is different from court records

2. Should a Secondary Claim filed in federal court on federal form and stating the provision under which relief can be granted, be honored? When dual filed with the first claim as in the case of Dayton Christian School v. Ohio Civil rights com'n, 578 F. supp.

3. Does the dismissal of a claim under a invalid motion violate the ninth amendment "Construed to Deny" the 7th amendment "Rights to a fair trial" 14th amendment Equal protection of the Law and the 1rst amendment "freedom of speech. Did council violate my constitutional right by breaching his promise of service.

4. Does the court have the right to deny the freedom of speech in event of conflict between due process right to a fair trial and freedom of speech, by issue of a motion to

cancel oral argument.

5. Should the court dismiss a claim because plaintiff parallel file as claim federal and state? Does dismissal violate the 1rst amendment.

6. Should there be a conflict between the U.S. District motion and the Ninth Circuit Court of Appeal ruling

7. E.E.O.C. form #5 charge of discrimination and Exhibit E to E-8 and Exhibit F to F4 was submitted to the Ninth Circuit for Ruling and merits evaluation. Was article VI paragraph 2 violated? Was article IV Section 2 violated? Was the 14th amendment of the constitution violated or title VII of the Civil Rights Act of 1964. Authority 42 USC 2000e 5(b) 29 USC 211,29 U.S.C 626 and under Section 706 of Title VII. The defendants did not rebut my claim submitted to the appeals court.

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NO._____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

OCTOBER TERM 1992

Theopolis L. Armstrong Petitioner

V.

HIGH DESERT HOSPITAL, ROGER HUGHES, COUNTY OF LOS ANGELES, COUNTY OF LOS ANGELES DEPARTMENT OF HEALTH SERVICES, AND DOES 1 THROUGH 100, INCLUSIVE. - RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATE COURT OF APPEAL FOR THE 9TH CIRCUIT

I, the petitioner. Theopolis L. Armstrong respectfully pray that a writ of certiorari be issued to revise the judgement and opinion of the United States Court of Appeals for the Ninth Circuit who refused to reverse the judgment of the U.S. District Courts issued June 26, 1991. The decision of the U.S. Court of Appeals page 2. "Neither he nor his attorney filed an opposition or appeared at the hearing." is in conflict with the U.S. District May 7. 1991 motion "Order taking the matter under submission without oral argument." The District Courts motion altered the defendant motion for oral argument. The courts motion is construed to give guaranteed assurance to the defendant motion my claim would be dismiss under fed. R. Civ. P. 8(a)(2) and under Local rule 7.6 and 7.9. and denied me the freedom of speech to deny the motion for dismissal. The defendant 12(b) motion was an invalid motion according statements made by the defendents in their motion. Line # 8 and 9 of Exhibit A5 of this petition.

OPINION BELOW

The opinion of the court of appeal is reported as Armstrong V. High Desert Hospital. CA No 91-56343 (9th Cir 1992) and appears in appendix A of this petition. The unpublished written opinion of the District Court for the Central District of California, appears in appendix B to this petition. The petition for re-hearing in the 9th Circuit of Appeals appears in appendix D.

JURISDICTION

The court of appeals opinion in this matter was filed on Oct. 30, 1992. A timely petition for rehearing was file on Nov 11, 1992. The court of appeals denial of the petition for rehearing was issued on December 2, 1992 and is set forth in appendix D. This court jurisdiction is invoked under title VII 42 USCA 2000e 5(b). A timely application for an extension of time to file a petition for a writ of certiorari with the supreme court of the United States, and is set forth in appendix A and Appendix D.

STATUTORY PROVISIONS

Amendments I,
Amendment VII
" IX
" XIV
Article IV Section 2, paragraph #1
Article VI paragraph #2
Under Section 706 of title VII of the Civil Right Act 1964

STATEMENT OF THE CASE

The United State District Court, Central District for California had jurisdiction Pursuant to title VII of the Civil rights Act of 1964. Authority 42 USC 2000e 5(b) 29 USC 211 , 29 U>S>C> 626 and under section 706. Title 28 USCA 12(b) (6), 12(b) (1) Title 26 USCA 7422 (a)

On March 13, 1991. I filed a claim of job discrimination supported by three exhibits, Exhibit A. E.E.O.C. form #5. Charge of Discrimination, March 1984. Clearly stating at the top left to see reverse which out line the purpose and provision. Also filed is Exhibit B was a right to sue notice

granted by the E.E.O.C. form No.161-B July 87 and a Los Angeles check stub showing unequal pay. as exhibit C. The charge # for form # 5 is B7-0892e and the charge # for form #161-B is 340904245. The A and B exhibit was filed as secondary to support my claim.

On April 22. 1991 counsel for the defendant filed to dismiss and or a more definite statement and or motion to strike (fed. R. civ. pro. 9(a)(2) 12(b)(6).12(e).12(f) Hearing for oral argument set for May 13. 1991. On May 2. 1991 I retain counsel for a more professional service. Counsel was inform of the nature of my complaint and being paralle1 filed state and federal. Counsel assured me on May 2. 1991. he would surrender his professional service to the best of his knowledge. Counsel required to be rewarded with a $1,000.00 retainer fee for the commencement of services Such was approved and done on May 2, 1991.

On May 7. 1991 the U.S. District Courts issued it's own motion.. "Order taking the matter under submission without oral argument.. See Appendix B2

On June 26, 1991, 45 days later, I received from the U.S. District Court a Notice the defendant motion was granted for failure to file an opposition motion.

I later retain counsel Lavery to ask for reinstatement under F.R.C.P. 60(b) which was denied.

Counsel Lavery attempted to file an amended complaint to the state claim. Denied because I chose federal proceeding.

I filed an appeal with the Ninth Circuit courts, which was accepted and the appeal court order it own excerpt of records from the U.S. District for review results after review claim reversal denied.

REASON FOR GRANTING THE WRIT

To determine if courts or the defendents violated my civil and constitutional right guarenteed by the constitution, when the U.S. District Courts and the appeal Court refuse to honor E.E.O.C. federal form #5, which is title charges of discrimination and it prevision on the reverse. Authority

42 U.S.C {2000e-5(b) 29 U.S.C} 626 under Section 706 of title VII of the civil Right Act of 1964.

When dual filed with the original complaint as a secondary complaint under which relief can be granted.

And to validate the guaranteed protection of my constitutional right the 1st, 7th, 9th and 14 amendment of the United States Constitution and Title VII of the Civil Right Act of 1964.

On March 13, 1991, I filed with the U.S. District Court a complaint for: Employment Discrimination and a charge of discrimination on federal from E.E.O.C. #5 as exhibit A and a right to sue Notice issued to me by the E.E.O.C. form #161-B as exhibit B. The right to sue notice was due to expire March 13, 1991, the day the federal claim was filed.

My complaint of employment discrimination was against the city of Los Angeles which was my second reason for filing parallel State and federal claim.

To have a claim filed against Los Angeles County and to hold a hearing or a trial in a Los Angeles County Court was a conflict of interest. Filing a claim in a Los Angeles County Court was on the advise of previous counsel Opel who declared this to be a must.

The defendant filed for the dismissal of my claim under motion 12(b)(6)12(e), 12(f) for failure to state a claim under which relief can be granted, hearing date May 13, 1991 U.S. District a motion for oral argument made. The defendant denied receipt of exhibit A charge of discrimination E.E.O.C. form #5 and Exhibit B. Right to sue Notice E.E.O.C. form #161-B. (seē exhibit A and B)

The defendant said in the motion for dismissal I filed an almost identical complaint in federal court March 13, 1991 as I did in State Court on Sept 25, 1990.

Quoted from the defendant May 13, 1991 Motion for dismissal and oral argument. 1. "Plaintiff has fail to make affirmative, factually base

allegation supporting proper **subject matter jurisdiction** and venue;

2. the claim fail to state a claim upon which relief can be granted; and

3. the complaint is so vague or ambiguous that the defendant cannot reasonably be required to frame a responsive pleading thereto."

The identical claim filed by me in the federal court on March 13, 1991 was a electronic photocopy of the claim file by counsel Opel on Sept 25, 1990 in the State Superior Court. The photocopy was from page 1 to page 10. The only changes made was court name, date, and the removal of counsel Opel name.

The defendant criticism of the federal claim filed, should be credit solely to the state claim. The federal claim was only a carbon copy of the state claim where the defendant also received E.E.O.C. form #5 as Exhibit A.

I did file with the U.S. District Courts a secondary claim which the original was derived from. Exhibit A charge of Discrimination E.E.O.C. form #5, which states on its reverse the provision under which it is to be filed

and used under Section 706 of title VII of the Civil Right Act of 1964.)
Authority 42 U.S.C (2000e-5(b). U.S.C) 211. 29. U.S.C) 626

Also. I filed a Notice of right to sue E.E.O.C. form #161-B, on March 13, 1991 the same day the notice was due to expire. The notice states, with issuance of this notice of Right to Sue, "the commission is terminating it process with respect to this charge." this is E.E.O.C. case closure

As permitted under federal statues Civil Rights Act of 1964 42 U.S. C.A.

" D. C.OHIO 1984. Dual or parallel state and federal scheme for eliminating discriminatory employment practices is permissible under federal statues and if state has law prohibiting alleged unlawful employment practice and agency authorized to grant or seek relief from such practice, then complaint must first commence state resolution of dispute prior to resort to federal system, and state l was are not preempted by federal statues except to extent such laws are inconsistent with purpose of federal statues or purport to require or permit the doing of any act which would be unlawful employment practice under federal statue. Civil Rights Act of 1964, -- 701 et seq., 702, 703, 706, 706 (b, c),

708 as amended, 42 U.S. C.A. -- 2000e et seq., 2000e-1, 2000e-2, 2000-e5(c,d), 2000-e-7; Ohio R.C. - 4112.-02(a).

Dayton Christian Schools v. Ohio Civil Rights Com'n, 578 F.Supp. 1004, injunction granted 604 F.Supp. 01, reversed 786, F2d 932, jurisdiction postponed 108 S.Ct. 379, 474 U.S. 978, 88 kL.Ed2d 332, reversed 108 S.Ct. 2718, 477 U.S. 619, 91 L.Ed.2d 512, on remand 802 F.2d 457 .

The filing of the Secondary claim charge of discrimination E.E.O.C form #5 which fall under the jurisdiction of 42 U.S.C. (2000e-5(b), U.S.C.) 211 and 29 U.S.C. (626) under section 706 title VII of the Civil Right Act of 1964. The defendant denial of receiving Exhibit A is a subject and jurisdiction matter which was reordered into the courts records.

The state claim filed on my behalf by counsel Opel and suffer from such criticism by the defendant in his motion to the U.S District and being part of a parallel filed claim is also jurisdiction matter outside the pleading.

The secondary claim, was filed into the court record and copy served

to the defendant. The secondary claim dispute the defendant motion.

as in the case of..

" American Federation of State, County and Mun. Employees, AFL-CIO (AFSCCME) v. Nassau County, 609 F.Supp. 695.

D.C.N.Y., 1985. Motions to dismiss for lack of subject-matter jurisdiction should be brought specifically under Federal Civil Procedure Rule 12(b)(1), not "Rule 12(b)" or Rule 12(b)(6), since facts outside pleadings may be considered on 12(b)(1) motion, while such material cannot be considered in conjunction with 12(b)(6) motion. Fed.Rules Civ.Proc.Rule 12(b), (b)(1,6), 28 U.S.C.A"

or as in the case of

" Gervasio v. U.S. 627 F. Supp 428.

N.D. Ill. 1986. Motion to dismiss, tax refund suit, predicated on taxpayer's alleged failure to meet jurisdictional prerequisites to bring tax refund suit as set forth in Internal Revenue code and Treasury Regulations, was treated as a motion to dismiss under Rule 12(b)(1) for lack of subject-matter jurisdiction, rather than as a motion to dismiss under Rule 12(b)(6) for failure to state a claim upon which relief could be granted. Fed.Rules Civ.Proce. Rule 12(b)(1, 6), 28 U.S.C.A.; 26 U.S.C.A. 7422(a)".

The defendant motion 12(b)(6) for failure to state a claim upon which

relief could be granted was an incorrect motion. The federal from E.E.O.C. #5 charge of discrimination and federal form #116-B Right to Sue Notice was filed into the courts records with provision of the E.E.O.C under section 706 title VII of the Civil Right Act of 1964 was a subject matter jurisdiction with exhibit A filed as a secondary claim.

Also, the invalid motion denied me the right to a fair trial, the freedom of speech, and equal protection of the law and should be considered as in the case of...

" Members of City Counsel of City of Los Angeles v. Taxpayers for Vincent, 104 S.Ct. 2118, 466 U.S. 789

U.S.Cal. 1984 There are two different ways in which a statue or ordinance may be considered invalid "on its face", either because it is unconstitutional in every conceivable application, or because it seeks to prohibit such a broad range of protected conduct that it is unconstitutionally overbroad. U.S.C.A. Const., Amend. 1".

Exhibit A of E.E.O.C. form #5 as a secondary claim filed did not require to set out in detail facts upon which the claim was based. But did allege

sufficient fact to outline the cause of action and provision under which relief could be granted and should be considered as in the case of...(see exhibit A and reverse side)

" Capalbo v. Paine Webber, Inc.,
694 F.Supp. 1315.

N.D.Ill. 1988. Upon motion to dismiss, plaintiff need not set out in detail facts upon which claim is based, but must allege sufficient facts to outline cause of action. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A".

Or, as in the case of...

" Zebrowski v. Denckla,
630 F.Supp. 1307

E.D.N.Y. 1986. Motion to dismiss for lack of jurisdiction based on alleged failure to state necessary elements of federal claim should be viewed as raising issue of whether complaint states claim upon which relief can be granted and treated as a 12(b)(6) motion when memoranda submitted by parties adequately discusses sufficiency of claim despite erroneous designation ground for motion. Fed.Rules Civ. Proc.Rule 12(b)(6), 28 U.S.C.A".

The defendant motion for the May 13 1991 hearing call for oral argument. On May 7, 1991 three working day before the hearing the U.S. District Court issued it own motion " " " "(Appendix B2". Order taking the matter under

submission without oral argument, "which cancelled the preliminary hearing and surrendered guaranteed assurance to the defendant motion for dismissal under Fed. R. Civ. P. 8(a)(2). local Rule 7 6 and local Rule 7 9. before the hearing could take place the courts motion was construed to alter the defendant motion for oral hearing which aided the defendant in the dismissal of my claim and denied the freedom of speech, denied the right to a trial, denied the equal protection of the law and violated the 9th amendment of the constitution as in the case of...(see appendix B2 and Exhibit A.

" Widoff v. Disciplinary Bd. of Supreme Court of Pennsylvania, 1980, 420 A.2d 41, 54 Pa. Cmwlth., 124, affirmed 430 A.2d 1151, 494 Pa. 129, appeal dismissed, certiorari denied 102 S.CT. 1266, 455 U.S. 914, 71 L.Ed.2d 454.

In event of conflict between due process right to fair trial and freedom of speech, this claus must prevail".

Or, as in the case of...

" Petrey v. Flaugher: D.C.Ky.1981, 505 F.Supp 1087.

Substantive due process or right under Amend. 9, not expressly found in text of Constitution, must be one that

is fundamental, able to be recognized as such by reference to teachings of history and basic values that underlie our society and such historical reference is necessary because of need for objective standard, so that judges may not elevate their purely personal political and social views to constitutional dignity merely by labeling them "fundamental"."

" First Nat. Bank v. Bellotti (1978)
435 US 765, 55 L Ed 2d 707

Freedom of speech and of press guaranteed by United States Constitution embraces at least liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent prosecution; United States Constitution protects expression which is eloquent no less than that which is unconvincing; major purpose of First Amendment is to protect free discussion of government affairs".

Nor was the court motion in light most favorable to me the plaintiff as in the case...

" Equitable Life Assu. Soc. of U.S v. Alexander Grant Co.
627 F. Supp 1023

S.D.N.Y. 1985. When considering motion to dismiss complaint, court is required to construe complaint in light most favorable to plaintiff".

Or as in the case...

" Dero Enterprises, Inc. v. Georgia Girl Fashions, Inc.

598 F. Supp. 318

D.C. N.Y 1984. On motion to dismiss for lack of personal jurisdiction, pleadings and affidavits are to be construed in light most favorable to plaintiff".

As stated, by the ninth circuit court of appeals page #2 of their ruling "neither he nor his attorney filed an opposition or appeared at the hearing." The U.S. District motion which canceiled the defendant motion for oral argument. Denied me the opportunity to orally dispute the defendant motion for dismissal (see court motion appendix B2 and defendant's motion line 7-8. as compared to the case of.....

"Cox v. Louisiana (1965)
379 US 536 Kentucky (1966) 384 US 195, 16 L Ed 2d 469, 86 S Ct 1407.

Freedom of speech is of paramount importance and may not be denied merely because it may create dispute".

E.E.O.C. form #5 and E.E.O.C. form #161-B, which was filed as exhibit A and B with my claim in the U.S District, would create Prim faci evidence with the use of exhibit E1-E8 and F-F6 under title VII of the Civil Right Act of 1964 which did not appear

beyond a doubt as in the case of...

"Usher v. City of Los Angeles,
828 F.2d 556

C.A.9(Cal.) 1987. On motion to dismiss, issue is not whether plaintiff ultimately will prevail, but whether he is entitled to offer evidence to support his claims; trial court may not grant motion to dismiss for failure to state claim unless it appears beyond doubt that plaintiff can prove no set facts in support of his claim which would entitle him to relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A".

The U.S. District court May 7, 1991 motion cancelled the defendant motion for preliminary hearing to determine any disputed facts, as in the case of

"Commodities Export Co. v. U.S. Customs Service
888 F.2d 431

C.A.6 (Mich.) 1989. A motion to dismiss under rule 12(b), and in particular a motion citing a jurisdictional defect, requires a preliminary hearing or hearing at trial to determine an disputed facts upon which the motion or the opposition to it is predicated. Fed.Rules Civ.Proc.Rule 12(b), (b)(1), (d), 28 U.S.C.A".

The U.S. district court records

disputed the defendant 12(b)(6) motion for failure to state a claim upon which relief could be granted I am submitting a certified copy of exhibit A which was in the record at the time the U.S. District issued the May 7, 1991 motion cancelling oral argument and taking the matter under submission without oral argument Exhibit A stated the charges and provision under which relief could be granted All recorded on federal form E.E.O.C #5 and E.E.O.C #161-B. see exhibit A, B, and appendix B2.

compared to the case of.....

"Zebrowski v. Denckla
630 F.Supp. 1307.

E.D.N.Y. 1986. Motion to dismiss for lack of jurisdiction based on alleged failure to state necessary elements of federal claim should be viewed as raising issue of whether complaint states claim upon which relief can be granted and treated as a 12(b)(6) motion when memoranda submitted by parties adequately discusses sufficiency of claim despite erroneous designation ground for motion. Fed.Rules Civ. Proc.Rule 12(b)(6), 28 U.S.C.A".

Counsel required a retainer fee of $1000.00 for the commencement of service and mail monthly statement. as if to be representing my case. Counsel

never file for extensions, never properly review record presented, never file any type motion in my behalf as promise. Never filed substitution of attorney for my replacement counsel had 11 day before the hearing date. I did not discover counsel false representation until June 26, 1991 at which time my complaint was dismiss.

Did counsel aid in the violation of my rights by breaching his promise of service as in the case of

"Midcoast Aviation, Inc. v. General Elec. Credit Corp. 907 F.2d 732.

C.A.7(Ill) 1990. Under Illinois law, one may become obligated to another by quasi contract which is an obligation similar in character to that of contract but which arises not form agreement of parties but from some relationship between them".

Counsel could have contested the defendent 12(b)(6) motion on ground the defendants stated in the 12(b)(6) motion "Plaintiff has failed to make affirmation factually based allegations supporting proper subject matter jurisdiction" (see defendant motion A5 line #1.)

as in the case of..

"American Federation of State, County and Mun. Employees, AFL-CIO (AFSCCME) v. Nassau County, 609 F.Supp. 695.

D.C.N.Y., 1985. Motions to dismiss for lack of subject-matter jurisdiction should be brought specifically under Federal Civil Procedure Rule 12(b)(1), not "Rule 12(b)" or Rule 12(b)(6), since facts outside pleadings may be considered on 12(b)(1) motion, while such material cannot be considered in conjunction with 12(b)(6) motion. Fed.Rules Civ.Proc.Rule 12(b), (b)(1,6), 28 U.S.C.A".

Or, as in the case of

"Gervasio v. U.S.,627 F.Supp 428

N.D. Ill. 1986. Motion to dismiss, tax refund suit, predicated on taxpayer's alleged failure to meet jurisdictional prerequisites to bring tax refund suit as set forth in Internal Revenue code and Treasury Regulations, was treated as a motion to dismiss under Rule 12(b)(1) for lack of subject-matter jurisdiction, rather than as a motion to dismiss under Rule 12(b)(6) for failure to state a claim upon which relief could be granted. Fed.Rules Civ.Proce. Rule 12(b)(1, 6), 28 U.S.C.A.; 26 U.S.C.A. 7422(a)".

Counsel could have contested the court May 7, 1991 motion cancelling Prelimenary hearing
as in the case of

"Commodities Export Co. v. U.S. Customs

Service
888 F.2d 431

C.A.6 (Mich.) 1989. A motion to dismiss under rule 12(b), and in particular a motion citing a jurisdictional defect, requires a preliminary hearing or hearing at trial to determine an disputed facts upon which the motion or the opposition to it is predicated. Fed.Rules Civ.Proc.Rule 12(b), (b)(1), (d), 28 U.S.C.A".

Or in the case of Cox v. Louisiana (1965)

"Cox v. Louisiana (1965)
379 US 536 Kentucky (1966) 384 US 195, 16 L Ed 2d 489, 86 S Ct 1407.

Freedom of speech is of paramount importance and may not be denied merely because it may create dispute".

Or as in the case of

"Widoff v. Disciplinary Bd. of Supreme Court of Pennsylvania,
1980, 420 A.2d 41, 54 Pa. Cmwlth,. 124, affirmed 430 A.2d 1151, 494 Pa. 129, appeal dismissed, certiorari denied 102 S.CT. 1266, 455 U.S. 914, 71 L.Ed.2d 454.

In event of conflict between due process right to fair trial and freedom of speech, this claus must prevail".

SUPERIOR COURT CLAIM

I am submitting the first page of the transcript of the Superior Court Oct. 4, 1991 hearing which records "case not

allowed to continue in Superior Court for plaintiff elected federal proceeding. Case No. MC000-650.

I exercised the 1st amendment of my constitutional rights. In the pararllel filing of the state federal claim, to salvage the right to sue notice by F.E.O.C. which was due to expire at the time federal claim was filed.

The Superior claim was dismissed forfor hearing on grounds plaintiff previously choose federal proceeding. as in the case of...

"D. C.OHIO 1984. Dual or parallel state and federal scheme for eliminating discriminatory employment practices is permissible under federal statues and if state has law prohibiting alleged unlawful employment practice and agency authorized to grant or seek relief from such practice, then complaint must first commence state resolution of dispute prior to resort to federal system, and state l was are not preempted by federal statues except to extent such laws are inconsistent with purpose of federal statues or purport to require or permit the doing of any act which would be unlawful employment practice under federal statue. Civil Rights Act of 1964, -- 701 et seq., 702, 703, 706, 706 (b, c), 708 as amended, 42 U.S. C.A. -- 2000e et seq., 2000e-1, 2000e-2, 2000-e5(c,d), 2000-e-7; Ohio R.C. - 4112.-

02(a)"

as in the case of

.

"Widoff v. Disciplinary Bd. of Supreme Court of Pennsylvania,
1980, 420 A.2d 41, 54 Pa. Cmwlth,. 124, affirmed 430 A.2d 1151, 494 Pa. 129, appeal dismissed, certiorari denied 102 S.CT. 1266, 455 U.S. 914, 71 L.Ed.2d 454.
In event of conflict between due process right to fair trial and freedom of speech, this clause must prevail".

as in the case of...

"Cox v. Louisiana (1965)
379 US 536 Kentucky (1966) 384 US 195.
16 L Ed 2d 469, 86 S Ct 1407.

Freedom of speech is of paramount importance and may not be denied merely because it may create dispute".

as in the case of...

"First Nat. Bank v. Bellotti (1978)
435 US 765, 55 L Ed 2d 707

Freedom of speech and of press guaranteed by United States Constitution embraces at least liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent prosecution; United States Constitution protects expression which is eloquent no less than that which is unconvincing; major purpose of First Amendment is to protect free discussion of government affairs"

or as in the case of:.

"Equitable Life Assu. Soc. of U.S v.

Alexander Grant Co.
627 F. Supp 1023

S.D.N.Y. 1985. When considering motion to dismiss complaint, court is required to construe complaint in light most favorable to plaintiff".

Or as in the case...

"Dero Enterprises, Inc. v. Georgia Girl Fashions, Inc.
598 F. Supp. 318

D.C. N.Y 1984. On motion to dismiss for lack of personal jurisdiction, pleadings and affidavits are to be construed in light most favorable to plaintiff".

The statement by the Superior Courts in regard to my April 8 letter is construed to deny. See transcript Superior Court Case #MC000-650

"9th Amendment (Certain Right not denied to the people)

The enumeration in the Constitution of certain right, shall not be construed to deny or disparage other retained by the people".

Or, as in the case of...

"Petrey v. Flaugher: D.C.Ky.1981,
505 F.Supp 1087.

Substantive due process or right under Amend. 9, not expressly found in text of Constitution, must be one that is fundamental, able to be recognized as such by reference to teachings of history and basic values that underlie

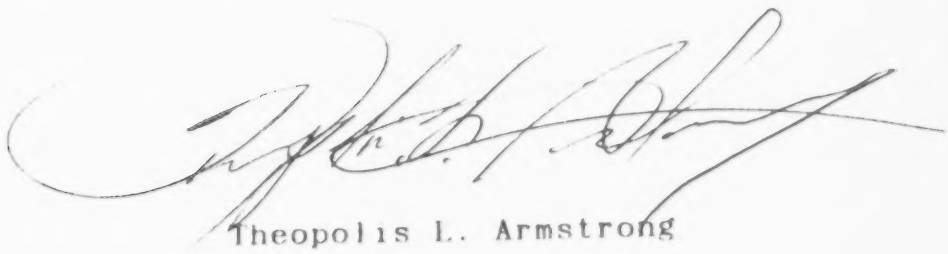
our society and such historical reference is necessary because of need for objective standard, so that judges may not elevate their purely personal political and social views to constitutional dignity merely by labeling them "fundamental.""

Conclusion

For the reasons set forth above, a writ of CERTIORARI should issue to review the judgement and opinion of the court of appeals in the matter.

Dated: April 21, 1993

Respectfully submitted



Theopolis L. Armstrong

If this court elect not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be remanded to the court of appeals for redetermination in light of this court's opinions in murry, supra, and sequra, supra

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

THEOPOLIS L. ARMSTRONG - PETITIONER

VS.

HIGH DESERT HOSPITAL, ROGER HUGHES, COUNTY OF LOS ANGELES, COUNTY OF LOS ANGELES DEPARTMENT OF HEALTH SERVICES, AND DOES 1 THROUGH 100, INCLUSIVE. - RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Appendix

In Pro Se Litigant
Theopolis L. Armstrong
12714 Daventry St.
Pacoima, CA 91331
818) 896 4745

NOT FOR PUBLICATION

UNITED STATES COURTS OF APPEALS

FOR THE NINTH CIRCUIT

THEOPOLIS ARMSTRONG, Plaintiff-Appellant; v. HIGH DESERT HOSPITAL; ROGER HUGHES; LOS ANGELOS COUNTY; COUNTY OF LOS ANGELES, Department of Health Services, Defendants-Appellees.	C.A. NO 91-56343 D.C. No CV 1368 -WDK MEMORANDUM*

On Appeal from the United States District Court for the Central District of California
William D. Keller, District Judge, Presiding

Submitted August 21, 1992**

Before: CHOY, SNEED, and SKOPIL, Circuit Judges:

Theopolis Armstrong appeals pro se the district court's denial of his Federal Rule of Civil Procedure 60 (b) (1) motion to reconsider dismissal of his action. The district court dismissed his action pursuant to Local Rule 7.9 for failure to file a timely opposition to defendants' motion to dismiss. We affirm.

District courts may dismiss for

failure to comply with pretrial procedures mandated by local rules and court orders. Thompson v. Housing Auth.of City of Los Angeles , 782 F.2d 829, 831

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by
Ninth Circuit Rule 36-3.

**
The panel unanimously finds this case suitable for submission on the record and briefs and without oral argument. Fed. R.App.P. 34 (a), Ninth Circuit Rule 34-4.

(9th Cir.), cert.denied, 479 U.S. 829 (1986). The court must consider the public's interest in expeditious resolution of litigation, the court's need to manage its docket, the risk of prejudice to the defendants, public policy favoring disposition of cases on their merits, and the availability of less drastic sanctions. Id. Although the district court did not expressly consider these factors, we may review the record independently to determine whether the court abused its discretion. Malone v. United States Postal Serv.,833 F.2d 128, 130 (9th Cir.1987), cert.denied, 488 U.S. 819 (1988).

Armstrong has the burden of

persuasion as to the reasonableness of his delay and the lack of prejudice to defendants. See Franklin V. Murphy, 745 F.2d 1221, 1232 (9the I. 1984). Under Local rule 7.6, he was required to file and serve an opposition to defendants' motion to dismiss. He was aware of the hearing date, but did not seek an extension. He did not hire a new attorney until after the deadline had expired for filing an opposition. Neither he nor his attorney filed an opposition or appeared at the hearing.

Under Local Rule 7.9, a party who fails to file the required papers may be deemed to have consented to the motion. Armstrong cannot avoid dismissal by arguing that he is an innocent party who will be made to suffer for the errors of his attorney. See West Coast Theater Corp V. City of Portland, 897 F.2d 1519, 1523 (9th Cir.1990). Whether prejudice to defendants is sufficient to support a dismissal is judged in part with reference to the strength of Armstrong's excuse for the delay. See Malone, 833 F.2d at 131. We conclude that Armstrong's unjustified violation of the local rule prejudiced defendants. See Carter v. Commissioner 784, F 2d 1006, 1008 (9th Cir.1986) (pro se plaintiffs are

required to abide by court rules).

The record is silent whether the district court considered the availability of less drastic prior to dismissal. We have reasoned, however, that this requirement can be satisfied by adequate warning to the party. See Malone, 833 F 2d at 132. Although the court did not expressly warn Armstrong that he might suffer a dismissal, an express warning was unnecessary here because Armstrong was put on notice by defendants' motion to dismiss and he was given an opportunity to be heard. See id at 133.

Although public policy favoring disposition on the merits weighs against dismissal, the public's interest in expeditious resolution of litigation and the court's interest in docket control support the district court's dismissal. Considering all of these factors, we conclude that the district court did not abuse its discretion in denying Armstrong's motion to reconsider the dismissal for failure to comply with a local rule.

AFFIRMED.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

No. CV 91-1368 Date June 24, 1991

THEOPOLIS ARMSTRONG v. HIGH DESERT et. al.

DOCKET Entered: June 26, 1991

PRESENT: HON. WILLIAM D. KELLER, JUDGE
Sara Tse None present
Deputy Clerk Court report

ATTORNEYS PRESENT FOR PLAINTINGS: None present

ATTORNEYS PRESENT FOR DEFENDANTS: None present

PROCEEDINGS:

Before the Court is Defendants' motion to dismiss the complaint pursuant to Fed. R. CIF. P.8 (a) (20. Plaintiff has filed no opposition to this motion as required by Local Rule 7.6. Under Local rule 7.9. the Court deems plaintiff's failure to file any opposition as a consent to the granting of Defendant's motion Accordingly, Defendants; motion to dismiss is Granted.

IT IS SO ORDER.

SIGNED
WILLIAM D. KELLER
United States District Judge

APPENDIX B-1 A-5

cc: Theopolis Armstrong
Alan Terakawa

MINUTES FORM 11 Initials of Deputy Clerk --

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No CV 91-1368-WDK Date 5-7-91

Title Theopolis L. Armstrong v. High Desert Hospital , et. al.

DOCKET ENTRY

PRESENT:
HON. WILLIAM D. KELLER, JUDGE
Sara Tse — None present
Deputy Clerk — Court reporter

ATTORNEYS PRESENT FOR PAINTIFFS:
none present

ATTORNEYS PRESENT FOR DEFENDANTS
none present

PROCEEDINGS: In Chambers): ORDER TAKING MATTER UNDER SUBMISSION WITHOUT ORAL ARGUMENT-

ON THE COURT'S OWN MOTION, IT IS

ORDERED that County of L.A's motion to dismiss & for a more definite statement and/or motion to strike noticed for hearing on 5-13-91, will be taken under submission on that date. No appearance by counsel shall be necessary on that date. and the Court will then issue its ruling

which will be mailed to counsel when the matter has been decided.

The Clerk shall mail a copy of this Order to counsel.

cc Theopolis Armstrong
Alan Terakawa

(STAMPED)

I herby certify that this document has served by first class mail postage prepaid , to all counsel or parties - at their respective most recent address of record in this action on this date.

Date 5-7-91

Initialed

Deputy Clerk

(STAMPED)
CLERK'S OFFICE U.S.D.C.
LOS ANGELES
11/30/92 9:14:03 A.M.
CASE # 91-1368
322350 COPY FEES
xxxxxxxT O T A L XXXXXXX .50
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THANK YOU

SUPREME COURT OF THE UNITED STATES

No.

A-601

Theopolis Armstrong,

Petitioner

v.

High Desert Hospital, et. al.

O R D E R

UPON CONSIDERATION of the application of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including

April 1, 1993.

s/ Sandra Day O'Connor
Associate Justice of the
Supreme Court of the United States

Dated this 12th
day of February, 1993.

APPENDIX C -A-9

NOT FOR PUBLICATION

UNITED STATES COURTS OF APPEALS

FOR THE NINTH CIRCUIT

THEOPOLIS ARMSTRONG, Plaintiff-Appellant, v. HIGH DESERT HOSPITAL; ROGER HUGHES; LOS ANGELES COUNTY; COUNTY OF LOS ANGELES Dept of Health Services - Defendants- Appellees.	C.A. No. 91-56343 D.C. No CV-91-1368-WDK ORDER F I L E D 12-2-92 Clerk U. S.Court of Appeals

On Appeal from the United States District Court for the Central District of California

William D. I, District Judge, Presiding

Before: CHOY, SNEED, and SKOPIL, Circuit Judges:

The panel has voted unanimously to

deny the petition for rehearing. Accordingly, the petition for rehearing is denied.

1. Title VII of the Civil Rights Act of 1964 Authority of 42 USC 2000e 5(b) 29 USC 211 29 U.S.C. 626 and under section 706.

2. Title 28 USCA 12(b) (6), 12(b),(1)

3. Title 26 USCA 7422 (a)

United States Constitution

Article IV. The States and the Federal Government

Section 1 Official Acts of the States

Full Faith Credit Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof. See also fourteenth amendment.

Article IV, Section 2 (Citizen of the States)

The citizen of each state shall be entitle to all privileges and immunities of citizen in several states.

Article VI, paragraph 2, (General Provisions)

Which define the supremacy of the National government "this Constitution and

the law of the United States which shall be made in pursuance thereof; and all treaties made or which shall be made, under the authority of every state shall be bound thereby anything in the Constitution or law of any state to the contrary notwithstanding.

1st Amendment (RESTRICTION OF POWER)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the free speech, or of the press; or the right of the people peaceable to assemble, and to petition the government for a redress of grievances.

7th Amendment (Trial by Jury)

"In suits at common, where the value in contorversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no facts tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the Common Law".

9th Amendment (Certain Right not denied to the people)

The enumeration in the Constitution of certain right, shall not be construed to deny or disparage other retained by the people.

14th Amendment

All persons born or naturalized in the united States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges of immunities of citizens of the United States nor shall any state deprive any person of life, liberty, or propertyu, without due process of law nor deny any person within its jurisdiction the equal protection of the law.